

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

| | | |
|---------------------|---|--------------------------------------|
| APPLE, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 1:21-cv-1003 |
| |) | |
| GANG CAO, |) | |
| |) | |
| Defendant. |) | |

ORDER

On January 14, 2022, United States Magistrate Judge John F. Anderson entered the Report and Recommendation (the “Report”) in this case, recommending that default judgment be entered in favor of Plaintiff Apple, Inc. and against Defendant Gang Cao in this trademark case. Judge Anderson further recommended a finding that plaintiff’s LIVE PHOTOS mark is appropriate for trademark protection either because (i) the mark is suggestive or, in the alternative, (ii) the mark is descriptive but has acquired a secondary meaning. Although the question is a close call (as Judge Anderson acknowledged in his Report), the Court finds that the LIVE PHOTOS mark is not suggestive, but instead finds that the LIVE PHOTOS mark is descriptive and has acquired a secondary meaning and is therefore appropriate for trademark protection.

Upon consideration of the record and Judge Anderson’s Report, to which no objections have been filed, and having found no clear error,¹

¹ See *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (in the absence of any objections to a magistrate’s report, the court “need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the

The Court **ADOPTS IN PART**, as its own, the findings of fact and recommendations of the United States Magistrate Judge, as set forth in the Report (Dkt. 29), to the extent that the Magistrate Judge recommended that plaintiff's LIVE PHOTOS trademark is valid and enforceable because it is a descriptive term that has acquired a secondary meaning.

Accordingly,

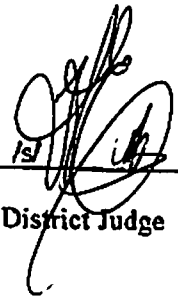
It is hereby **ORDERED** that plaintiff's motion for default judgment (Dkt. 20) is **GRANTED**.

It is further **ORDERED** that **DEFAULT JUDGMENT** be entered in favor of Plaintiff Apple, LLC and against Defendant Gang Cao.

It is further **ORDERED** that a **DECLARATORY JUDGMENT** be entered that plaintiff's LIVE PHOTOS trademark is valid and enforceable and that the director of the United States Patent & Trademark Office is **DIRECTED** to issue a certification of registration for plaintiff's LIVE PHOTOS mark.

The Clerk is further directed to provide a copy of this Order to all counsel of record, to Defendants' last known addresses of record, and to place this matter among the ended causes.

Alexandria, Virginia
February 8, 2022



T. S. Ellis, III
United States District Judge

recommendation."").